

a9
cont.

at least one cap engaging the shell;
a drawer carried by the cap for movement between an inward position and an outward position spaced-apart from the inward position;
a spring configured to yieldably bias the drawer away from the inward position; and
a gasket disposed between the drawer and the cap and configured to sealingly engage both of the drawer and the cap at least when the drawer is at the inward position.

47. The casket of claim 46, further comprising a latching mechanism operably coupled to the cap and to the drawer and operable to compress the gasket between the cap and the drawer.

Remarks

Claims 1-6, 10, 16, 18-20, 24, 25 and 27 have been amended, and all of the claims remain in the application. The allowability of claims 16, 18, 20-25 and 27 is noted with appreciation. New claims 28-47 have been added. A substitute Fig. 1 is enclosed. Minor amendments have been made to the Specification. Re-examination and reconsideration of the application, in view of the amendments above and the remarks below, are respectfully requested.

The Examiner rejected claims 2-27 under 35 U.S.C. §112, second paragraph, as being indefinite. Amendments have been made to certain ones of the claims which, it is believed, remedy these rejections, and therefore reconsideration and withdrawal thereof is respectfully requested.

The Examiner rejected claims 1-11 and 19 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al U.S. Patent No. 5,727,291 in view of Estes U.S. Patent No. 4,962,574 and further in view of Shanks U.S. Patent No. 3,680,941. Reconsideration and withdrawal of the rejection is respectfully requested.

Of these claims, claim 1 is the only independent claim, with the balance of the claims depending either directly or indirectly on claim 1. In that claim, Applicants are claiming a sealable casket having a memorabilia compartment. The casket comprises a shell, at least one cap pivoted to the shell, the shell and cap having respective confronting flanges, a first gasket disposed between the flanges of the shell and cap to seal therebetween, a memorabilia compartment formed within the cap and including an access opening and an interior, a removable cover positioned over the access opening and a second gasket disposed between the cover and the cap to seal therebetween. The Examiner cited Biondo et al, directed to a casket having a memorabilia compartment, as teaching a memorabilia compartment in a casket cap, and cited Estes, for a plural casket display, as teaching a gasket between the confronting flanges of a casket shell and cap. To this combination the Examiner then adds Shanks, for a food storage compartment for a refrigerator. The Examiner cited

Shanks as teaching a gasket 33 between its drawer face 37 and "cap" 20. In actuality, however, element 20 of Shanks is not a "cap" as claimed, but rather is the transparent clear plastic housing of the refrigerator food storage compartment. The Examiner's reading of element 20 as being Applicants' "casket cap" notwithstanding, it is clear that Shanks simply has absolutely nothing to do with caskets, the field of endeavor to which Applicants' invention is directed. One can hardly imagine combining a food storage compartment with a casket to produce anything useful, much less a sealable casket having a memorabilia compartment. As such, the Examiner's rejection raises the specter of the rejection being based on hindsight, which is error as a matter of law.

The Federal Circuit has recently again strongly reaffirmed this cardinal principal of law. In re Dembiczak, 50 USPQ 2d 1614, 1717-1618 (Fed. Cir. 1999), the Court stated:

All the obviousness rejections affirmed by the Board resulted from a combination of prior art references, e.g., the conventional trash or yard bags, and the Holiday and Shapiro publications teaching the construction of decorated paper bags. *See Dembiczak*, slip op. at 6-7. To justify this combination, the Board simply stated that "the Holiday and Shapiro references would have suggested the application of . . . facial indicia to the prior art plastic trash bags." *Id.* at 18-19. However, rather than pointing to specific information in Holiday or Shapiro that suggest the combination with the conventional bags, the Board instead described in detail the similarities between the Holiday and Shapiro references and the claimed invention, noting that one reference or the other -- in combination with each other and the conventional trash bags -- described all of the limitations of the pending claims. *See id.* at 18-28. Nowhere does the Board particularly identify any suggestion, teaching, or motivation to combine the children's art references (Holiday and Shapiro) with the conventional trash or lawn bag references, nor does the

Board make specific -- or even inferential -- findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. See, e.g., *Pro-Mold & Tool*, 75 F. 3d at 1573, 37 USPQ2d at 1630.

To the contrary, the obviousness analysis in the Board's decision is limited to a discussion of the ways that the multiple prior art references can be combined to read on the claimed invention. For example, the Board finds that the Holiday bag reference depicts a "premanufactured orange" bag material, see *Dembiczak*, slip op. at 21, finds that Shapiro teaches the use of paper bags in various sizes, including "large", see *id.* at 22-23, and concludes that the substitution of orange plastic for the crepe paper of Holiday and the paper bags of Shapiro would be an obvious design choice, see *id.* at 24. Yet this reference-by-reference, limitation-by-limitation analysis fails to demonstrate how the Holiday and Shapiro references teach or suggest their combination with the conventional trash or lawn bags to yield the claimed invention. See *Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1459 (noting Board's failure to explain, when analyzing the prior art, "what specific understanding or technical principle . . . would have suggested the combination"). Because we do not discern any finding by the Board that there was a suggestion, teaching, or motivation to combine the prior art references cited against the pending claims, the Board's conclusion of obviousness, as a matter of law, cannot stand. See *C.R. Bard*, 157 F.3d at 1352, 48 USPQ2d at 1232; *Rouffet*, 149 F.3d at 1359, 47 USPQ2d at 1459; *Fritch*, 972 F.2d at 1265, 23 USPQ2d at 1783; *Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600; *Ashland Oil*, 776 F.2d at 297, 227 USPQ at 667.

The same holds true here. Rather than pointing to specific information in the three references cited and applied against the claims that suggests their combination, the Examiner instead described in detail the similarities between those

references and the claimed invention, noting that one reference or the other – in combination with each other – described all the limitations of the pending claims. Nowhere did the Examiner particularly identify any suggestion, teaching or motivation to combine the three references, nor did the Examiner make specific – or even inferential – findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. To the contrary, the Examiner's obviousness analysis is limited to a discussion of the ways that the multiple prior art references can be combined to read on the claimed invention. This reference-by-reference, limitation-by-limitation analysis fails to demonstrate how the references teach or suggest their combination to yield the claimed invention. Since there is no finding by the Examiner that there was a suggestion, teaching or motivation to combine the prior art references cited against the pending claims, the Examiner's conclusion of obviousness, as a matter of law, cannot stand.

In view of the allowability of independent claim 1, it is submitted that all of the claims which depend either directly or indirectly therefrom are allowable for at least the same reasons as claim 1, as well as others.

Lastly, the Examiner indicated that claims 16, 18, 20-25 and 27 would be allowable if rewritten to overcome the §112 rejections and in independent form. Certain ones of these claims have been amended to place all of claims 16, 18, 20-25 and 27 in a condition for allowance.

New claims 28-47 have been added to afford Applicants additional protection. It is respectfully submitted that these new claims define patentable subject matter and allowance thereof is respectfully requested.

In view of the above, it is submitted that claims 1-47 are all entirely in a condition for allowance. Re-examination of the application is respectfully requested, and an early Notice of Allowance is earnestly solicited.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: 

Wayne L. Jacobs
Reg. No. 35,553

2700 Carew Tower
Cincinnati, OH 45202
(513) 241-2324

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Specification

On page 7, line 20 , the third paragraph should read:

Referring still to Fig. 1, the sealable casket 10 includes a memorabilia compartment 50 formed preferably within the foot end cap 16. The memorabilia compartment 50 includes an access opening 52 and a removable cover 54 positioned over the access opening 52. A gasket 56 is disposed between the cover 54 and the cap 16 forming a seal therebetween. Cover [plate] 54 is preferably a face plate of a drawer 60 movably mounted in the cap 16. Gasket 56 is positioned against an outside surface 62 of header wall 32.

On page 9, line 11, the 2nd paragraph should read:

Referring now back to Fig. 2, the drawer 60 includes a front 120, back 122, sides 124 and bottom 126. Drawer 60 may be fabricated of stamped and/or welded sheet metal or plastic. Decorative flocking or the like (not shown) may be installed on the bottom 126. Each of the sides 124 of the drawer 60 includes a rail 130 therealong. Each rail 130 rides in a respective one of the semicircular channels 110 in the channel 74. Thus, pushing the drawer 60 completely into the channel 74 causes the ends 132 of the rails 130 to compress the [tension] springs 102. In other words, drawer 60 is spring biased towards an outward position relative to the channel 74 and cap 16.

In The Claims

1. (AMENDED) A sealable casket having a memorabilia compartment, said casket comprising:

a shell;

at least one cap pivoted to said shell;

said shell and at least one cap having respective confronting flanges;

a first gasket disposed between said flanges of said shell and at least one cap to seal therebetween;

a memorabilia compartment formed within said at least one cap and including an access opening and an interior;

a removable cover positioned over said access opening; and

a second gasket disposed between said cover and said at least one cap to seal therebetween.

2. (AMENDED) The casket of claim 1 wherein said casket is a full top casket and said at least one cap is [having] a single full length cap.

3. (AMENDED) The casket of claim 1 wherein said casket is a cut top casket and said at least one cap is [having] a pair of caps: a head end cap and a foot end cap.

4. (AMENDED) The casket of claim 1 wherein said cover [plate] is a face plate of a drawer movably mounted in said at least one cap.

5. (AMENDED) The casket of claim 3 wherein said cover [plate] is a face plate of a drawer movably mounted in one of said head end and foot end caps.

6. (AMENDED) The casket of claim 3 further comprising a third gasket disposed between said head and foot end caps to seal therebetween.

10. (AMENDED) The casket of claim 9 wherein said second gasket is positioned against an outside surface of said header wall around said access opening.

16. (AMENDED) A sealable casket having a memorabilia compartment, said casket comprising:
a shell;
at least one cap pivoted to said shell;
said shell and at least one cap having respective confronting flanges;
a first gasket disposed between said flanges of said shell and at least one cap to seal therebetween;
a memorabilia compartment formed within said at least one cap and including an access opening and an interior;

a removable cover positioned over said access opening; and

a second gasket disposed between said cover and said at least one cap

to seal therebetween;

wherein said casket is a cut top casket and said at least one cap is a pair

of caps: a head end cap and a foot end cap;

wherein said cover is a face plate of a drawer movably mounted in one

of said head end and foot end caps;

wherein said drawer is movably mounted in said foot end cap;

wherein said foot end cap includes a header wall and wherein said

access opening is formed in said header wall;

wherein said drawer is movable into and out of said foot end cap

through said access opening in said header wall;

wherein said second gasket is positioned against an outside surface of

said header wall around said access opening;

further comprising a drawer support within said foot end cap and

mounted from an inside surface of said header wall;

wherein said drawer support is an open-ended generally C-shaped

channel;

wherein said channel is mounted from said inside surface of said header

wall with a pair of brackets, one bracket of said pair being located on each lateral side

of said channel;

wherein each said bracket has a longer leg and a shorter leg, said longer leg being secured to said channel and said shorter leg being secured to said inside surface of said header wall; and

[The casket of claim 14] wherein said longer leg has an upwardly directed U-shaped tang at a lower edge thereof a free end of which is received in a slot at a lower edge of said channel, and a downwardly directed U-shaped clip has one leg received in a slot at an upper edge of said channel the other leg of which U-shaped clip retains said longer leg of said bracket against a side of said channel.

18. (AMENDED) A sealable casket having a memorabilia compartment, said casket comprising:

a shell;

at least one cap pivoted to said shell;

said shell and at least one cap having respective confronting flanges;

a first gasket disposed between said flanges of said shell and at least one cap to seal therebetween;

a memorabilia compartment formed within said at least one cap and including an access opening and an interior;

a removable cover positioned over said access opening; and

a second gasket disposed between said cover and said at least one cap to seal therebetween;

wherein said casket is a cut top casket and said at least one cap is a pair of caps: a head end cap and a foot end cap;

wherein said cover is a face plate of a drawer movably mounted in one of said head end and foot end caps;

wherein said drawer is movably mounted in said foot end cap;

wherein said foot end cap includes a header wall and wherein said access opening is formed in said header wall;

wherein said drawer is movable into and out of said foot end cap through said access opening in said header wall;

wherein said second gasket is positioned against an outside surface of said header wall around said access opening;

further comprising a drawer support within said foot end cap and mounted from an inside surface of said header wall;

wherein said drawer support is an open-ended generally C-shaped channel;

wherein said drawer is spring biased towards an outward position; and

[The casket of claim 17] wherein each lateral side of said channel includes a semi-circular channel therein, and wherein each semi-circular channel includes a compression spring therein and retained at an inward end thereof by a retaining pin, and further wherein said drawer includes a rail on each lateral side thereof which rides in a respective semi-circular channel, such that pushing said

drawer completely into said channel causes said rails of said drawer to compress said [tension] springs.

19. (AMENDED) The casket of claim 10 further including a latch mechanism which latches said drawer in an inward position and compresses said second gasket between said face plate and header wall.

20. (AMENDED) A sealable casket having a memorabilia
compartment, said casket comprising:

- a shell;
- at least one cap pivoted to said shell;
- said shell and at least one cap having respective confronting flanges;
- a first gasket disposed between said flanges of said shell and at least one
cap to seal therebetween;
- a memorabilia compartment formed within said at least one cap and
including an access opening and an interior;
- a removable cover positioned over said access opening; and
- a second gasket disposed between said cover and said at least one cap
to seal therebetween;
- wherein said casket is a cut top casket and said at least one cap is a pair
of caps: a head end cap and a foot end cap;

wherein said cover is a face plate of a drawer movably mounted in one of said head end and foot end caps;

wherein said drawer is movably mounted in said foot end cap;

wherein said foot end cap includes a header wall and wherein said access opening is formed in said header wall;

wherein said drawer is movable into and out of said foot end cap through said access opening in said header wall;

wherein said second gasket is positioned against an outside surface of said header wall around said access opening;

further comprising a drawer support within said foot end cap and mounted from an inside surface of said header wall;

[The casket of claim 19] wherein said latch mechanism includes a cam operable on an inside surface of said header wall which when actuated draws said face plate and header wall toward one another.

24. (AMENDED) The casket of claim 23 wherein said housing has a flange on one end and is threaded on the other end, and wherein said rubber washer is compressed between said flange and face plate by a first nut threaded onto said housing threaded end on an inside surface of said face plate.

25. (AMENDED) The casket of claim [23] 24 wherein said hex head insert is threaded and said cam is secured onto said insert threaded end by a second nut, said cam and [cam] second nut being positioned inward of said [housing] first nut.

27. (AMENDED) A sealable casket having a memorabilia compartment, said casket comprising:

a shell;

at least one cap pivoted to said shell;

said shell and at least one cap having respective confronting flanges;

a first gasket disposed between said flanges of said shell and at least one cap to seal therebetween;

a memorabilia compartment formed within said at least one cap and including an access opening and an interior;

a removable cover positioned over said access opening; and

a second gasket disposed between said cover and said at least one cap to seal therebetween;

wherein said casket is a cut top casket and said at least one cap is a pair of caps: a head end cap and a foot end cap;

wherein said cover is a face plate of a drawer movably mounted in one of said head end and foot end caps;

wherein said drawer is movably mounted in said foot end cap;
wherein said foot end cap includes a header wall and wherein said
access opening is formed in said header wall;
wherein said drawer is movable into and out of said foot end cap
through said access opening in said header wall;
wherein said second gasket is positioned against an outside surface of
said header wall around said access opening;
further comprising a drawer support within said foot end cap and
mounted from an inside surface of said header wall;
wherein said drawer support is an open-ended generally C-shaped
channel;
further including at least one drawer stop operable between said
channel and said drawer to prevent said drawer from being completely withdrawn
from said channel; and

[The casket of claim 26] wherein said at least one drawer stop comprises a U-shaped first end which fits over a front upper edge of said channel and a wing extending generally perpendicularly from said U-shaped first end, which said wing projects through a slot in an upper portion of said channel whereby said wing is in a path of a rear wall of said drawer as said drawer is being withdrawn to thereby block complete withdrawal of said drawer from said channel.

Claim 28 has been added.

Claim 29 has been added.

Claim 30 has been added.

Claim 31 has been added.

Claim 32 has been added.

Claim 33 has been added.

Claim 34 has been added.

Claim 35 has been added.

Claim 36 has been added.

Claim 37 has been added.

Claim 38 has been added.

Claim 39 has been added.

Claim 40 has been added.

Claim 41 has been added.

Claim 42 has been added.

Claim 43 has been added.

Claim 44 has been added.

Claim 45 has been added.

Claim 46 has been added.

Claim 47 has been added.

